

TEXAS COURT OF CRIMINAL APPEALS

No. PD-0847-20

No. PD-0848-20

FILED
COURT OF CRIMINAL APPEALS
10/8/2020
DEANA WILLIAMSON, CLERK

Stoyan K. Anastassov, Appellant,

v.

State of Texas, Appellee

**On Discretionary Review from the Fifth Court of Appeals
Nos. 05-19-00396-CR & 05-19-00397-CR**

**On Appeal from the 292nd District Court, Dallas County
Nos. F15-50349 & F15-50350**

**Anastassov's Response to the
Petition for Discretionary Review filed by
the State Prosecuting Attorney**

Michael Mowla
P.O. Box 868
Cedar Hill, TX 75106
Phone: 972-795-2401
Fax: 972-692-6636
michael@mowlalaw.com
Texas Bar No. 24048680
Attorney for Anastassov

I. Identity of Parties, Counsel, and Judges

Stoyan K. Anastassov, Appellant

Thomas Pappas, attorney for Appellant at trial

Cally Brown, attorney for Appellant at trial

State of Texas, Appellee

John Cruezot, Dallas County District Attorney

Craig Watkins, Dallas County District Attorney (indictment)

Faith Johnson, Dallas County District Attorney (pretrial)

Brandie Wade, Dallas County Assistant District Attorney

Patrick Capetillo, Dallas County Assistant District Attorney

Delayna Griffin, Dallas County Assistant District Attorney

Judge Brandon Birmingham, 292nd Dist. Ct. Dallas Co.

Judge Ernest White, 194th Dist. Ct. Dallas Co.

Justice Ken Molberg, Fifth Court of Appeals

Justice Erin Nowell, Fifth Court of Appeals

Justice David Schenck, Fifth Court of Appeals

II. Table of Contents

I. Identity of Parties, Counsel, and Judges.....	2
II. Table of Contents.....	3
III. Table of Authorities	4
IV. Argument.....	5
V. Conclusion.....	7
VI. Certificate of Service	8
VII. Certificate of Compliance	8

III. Table of Authorities

Cases

<i>Arredondo v. State</i> , 270 S.W.3d 676 (Tex.App.-Eastland 2008)	5
<i>State v. Crook</i> , 248 S.W.3d 172 (Tex.Crim.App. 2008)	5

Statutes

Tex. Code Crim. Proc. Art. 36.14 (2019)	6
---	---

Rules

Tex. Rule App. Proc. 70.2 (2020)	5
Tex. Rule App. Proc. 9.4 (2020)	8

To the Honorable Judges of the Texas Court of Criminal Appeals:

Appellant Anastassov submits this response to the petition for discretionary review filed by the State Prosecuting Attorney (“SPA”):

IV. Argument

Reserving his right under [Tex. Rule App. Proc. 70.2 \(2020\)](#) to file a brief should this Court should grant review of the decision of the Court of Appeals to strike provisions in the judgments that could have required Anastassov to pay more than \$599 in court costs or more than \$10,000 in fines, Anastassov briefly states his position on the claim of the SPA.

Anastassov **agrees** that he should **not** be required to pay more than \$10,000 in fines even if the return of separate verdicts by the jury implies their intent to assess separate pecuniary penalties. Under [State v. Crook, 248 S.W.3d 172, 176-177 \(Tex.Crim.App. 2008\)](#), the jury should **not** have been given the opportunity to assess more than \$10,000 in fines. The State correctly states that “when the sentences are concurrent, multiple fines should be treated as a unitary fine.” This is especially true because the legislature made **no** attempt to alter the statutes in light of *Crook*. See [Arredondo v. State, 270 S.W.3d 676, 683 \(Tex.App.-Eastland 2008\)](#) (“We note that, in the four legislative sessions subsequent to

the *Nguyen* decision, the legislature has not amended the definition of ‘combination’ and, therefore, presume that it agrees with this construction.”).

Perhaps how *Crook* should be applied deserves the attention of the Court as the caretaker of the State’s criminal jurisprudence. The idea of concurrent “running” of each fine is a difficult concept to embrace as the dissents in *Crook* complained. It may be better to speak of fines being “jointly discharged” with payments due on the “jointly discharged” fine. Or this Court might make clear that a jury should be informed about the maximum aggregate fine available—as a result of the State’s decision to try two or more cases together.

In any event, if this Court is dissatisfied with the remedy chosen by the Court of Appeals in this case, any change in how *Crook* is applied should be prospective in nature as there was **no** error in how the matter was resolved given: the status of the law on August 12, 2020, the neglect of the State to ask the court of appeals to reconsider its ruling, and the neglect of the State to object to the jury charge in this regard in accord with [Tex. Code Crim. Proc. Art. 36.14 \(2019\)](#). The State errs in asserting that each fine was authorized by the statute. (SPA’s PDR at 4-5). Rather,

the fine in each case must be adjusted to equal **no** more than \$10,000 in total. Because they were **not**, one or the other of the judgments was void insofar as the judgment allows collection of a fine without credit for any amount already paid under the other.

Of course, under the facts of this case, there is **no** possibility that the conviction in one case will be set aside and the other affirmed, so the State's hypothesized harm does **not** appear to be actual.

V. Conclusion

The Court of Appeals did **not** err by modifying the judgment in F15-50350 to delete the \$10,000 fine and \$599 in court costs.

Respectfully submitted,

Michael Mowla
P.O. Box 868
Cedar Hill, TX 75106
Phone: 972-795-2401
Fax: 972-692-6636
michael@mowlalaw.com
Texas Bar No. 24048680
Attorney for Anastassov



/s/ Michael Mowla
Michael Mowla

VI. Certificate of Service

I certify that on October 8, 2020, this document was served by efile on the Dallas County District Attorney's Office to DCDAAppeals@dallascounty.org and Kimberly.Duncan@dallascounty.org; and on the State Prosecuting Attorney to stacey.soule@spa.texas.gov, john.messinger@spa.texas.gov, and information@spa.texas.gov.



/s/ Michael Mowla
Michael Mowla

VII. Certificate of Compliance

I certify that this document complies with the: (1) type-volume limitations because it is computer-generated and does **not** exceed 2,400 words. Using the word-count feature of Microsoft Word, this document contains **544** words **except** in the caption; identity of parties, counsel, and judges; table of contents; table of authorities; statement regarding oral argument; statement of the case, procedural history, and statement of jurisdiction; statement of grounds for review; signature; certificate of service; certificate of compliance; and appendix; and (2) typeface requirements because it was prepared in a proportionally spaced typeface using Microsoft Word in 14-point font. See [Tex. Rule App. Proc. 9.4 \(2020\)](#).



/s/ Michael Mowla
Michael Mowla

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Michael Mowla on behalf of Michael Mowla
Bar No. 24048680
michael@mowlalaw.com
Envelope ID: 46992228
Status as of 10/8/2020 10:28 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
John Messinger		john.messinger@spa.texas.gov	10/8/2020 3:40:17 AM	SENT
Appellate DallasDA		dcdaappeals@dallascounty.org	10/8/2020 3:40:17 AM	SENT
TexasSPA TexasSPA		information@spa.texas.gov	10/8/2020 3:40:17 AM	SENT
Kimberly Duncan		Kimberly.Duncan@dallascounty.org	10/8/2020 3:40:17 AM	SENT
Stacey Soule		stacey.soule@spa.texas.gov	10/8/2020 3:40:17 AM	SENT